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12 CALIFORNIA FOUNDATION FOR
13 INDEPENDENT LIVING CENTERS;
14 CALIFORNIANS FOR DISABILITY
15 RIGHTS, INC.; and MARIAN GRAY,

16 Plaintiffs,

17 v.

18 CITY OF OAKLAND; OFFICE OF
19 EMERGENCY SERVICES of the Oakland
20 Fire Department; DEPARTMENT OF
21 HUMAN SERVICES of the City of Oakland;
22 OFFICE OF PARKS AND RECREATION of
the City of Oakland; RENEE A. DOMINGO,
in her official capacity as Director of the
Office of Emergency Services; ANDREA
YOUNGDAHL, in her official capacity as
Director of the Department of Human
Services; AUDREE JONES-TAYLOR, in her
official capacity as Director of the Office of
Parks and Recreation; and DEBORAH
EDGERLY, in her official capacity as City
Administrator of the City of Oakland;

23 Defendants.

DISABILITY RIGHTS ADVOCATES
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Case No.: C 07 04608 EDL

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF CIVIL RIGHTS &
DISCRIMINATION AGAINST PEOPLE
WITH DISABILITIES: AMERICANS
WITH DISABILITIES ACT; SECTION
504 OF THE REHABILITATION ACT OF
1973; CALIFORNIA CIVIL CODE § 54, *et
seq.*; CALIFORNIA GOVERNMENT
CODE § 11135, *et seq.*; DECLARATORY
RELIEF**

Plaintiffs, by their attorneys Disability Rights Advocates, as and for their complaint against Defendants, allege as follows:

INTRODUCTION

1. This case arises out of discrimination by Defendants towards the over 84,000 residents of the City of Oakland with disabilities. The neglect of these disabled residents is the product of Defendants' failure to sufficiently plan to meet the unique needs of people with disabilities during an emergency. Potential shelter facilities are physically inaccessible and mass care and shelter policies, procedures, and plans for people with disabilities are inadequate or non-existent.

10 2. Many of the facilities on Oakland's list of potential emergency shelters are
11 inaccessible to people with disabilities. The problems include inaccessible entrances, paths of
12 travel, bathrooms, showers, signage, and parking.

13 3. In addition, Oakland does not have a current mass care and shelter plan that
14 addresses the needs of people with disabilities; a database of potential shelters with current and
15 comprehensive accessibility information; an inventory of shelter supplies; or arrangements with
16 community-based organizations, pharmacies, or providers of medical supplies and equipment.

17 4. Recent catastrophic disasters, such as 9/11 and Hurricanes Katrina and Rita, have
18 made local government officials acutely aware of the critical need to plan to provide mass care
19 and shelter services to large numbers of impacted citizens. They are also cognizant of the
20 barriers that people with disabilities have faced in past disasters when they tried to access
21 emergency shelter services. Local officials have acknowledged that Oakland needs to improve
22 its mass care and shelter planning to address the needs of people with disabilities. Yet, the City
23 of Oakland has been dragging its feet for years, relying on an incomplete plan that is twenty
24 years old.

25 5. The result of Oakland's failure to adequately plan to meet the shelter needs of
26 people with disabilities is that it cannot assure that when a disaster happens, the City will be able
27 to provide acceptable mass care and shelter services to all residents with disabilities. Oakland's
28 inability to provide critical emergency services to people with disabilities means that the lives of
this vulnerable population are at extreme risk.

1 6. Oakland's failure to address the emergency needs of men, women, and children
2 with disabilities is particularly egregious because geographical, environmental and demographic
3 factors make Oakland exceptionally vulnerable to a number of hazards likely to require
4 evacuation to emergency shelters. Oakland lies within the San Andreas fault system and
5 straddles the Hayward fault, making earthquakes a constant threat. Oakland is also at risk for
6 uncontrolled fires, flooding, landslides, hazardous waste accidents, and terrorism-related
7 emergencies.

8 7. In the last twenty-five years, the City of Oakland has experienced eight
9 Presidential-declared disasters, including the 1989 Loma Prieta earthquake and 1991 Oakland
10 Hills Firestorm. During many of these disasters, the homes of Oakland residents were destroyed,
11 requiring mass evacuations and the provision of emergency shelter services

12 8. When natural or man-made disasters occur, disabled men women, and children
13 are among the people most likely to suffer because they cannot access critical information,
14 transportation, or evacuation services. They are also more likely to use emergency shelters
15 because they are disproportionately low income and do not have other options.

16 9. Because of Defendants' knowing failure to adequately survey potential shelter
17 sites and revise its mass care and shelter policies and procedures to address the needs of people
18 with disabilities, Plaintiffs have been denied equal access to Oakland's shelter facilities,
19 programs, and services, in violation of the Americans with Disabilities Act, Section 504 of the
20 Rehabilitation Act of 1973, California Civil Code § 54, *et seq.*, and California Government Code
21 § 11135. Plaintiffs seek injunctive and declaratory relief as to these ongoing violations of federal
22 and state civil rights laws.

JURISDICTION

24 10. This is an action for declaratory and injunctive relief, brought pursuant to the
25 Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213, and Section 504 of the
26 Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, as well as California Civil Code § 54 *et seq.*
27 and California Government Code § 11135, *et seq.*

28 ||| 11. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

1 12. This Court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C.
2 §§ 2201 and 2202.

VENUE

4 13. Venue is proper in the Northern District of California under 28 U.S.C. § 1331(b)
5 because: (i) the organizational Plaintiffs have members within the district; (ii) Plaintiff Marian
6 Gray resides in the district; (iii) Defendants are all located within the district; and (iv) the acts
7 and omissions giving rise to this claim have occurred within the district.

PARTIES

9 14. Organizational Plaintiff California Foundation for Independent Living Centers
10 ("CFILC") is a statewide, non-profit organization made up of twenty-five Independent Living
11 Centers ("ILCs"), which are community-based organizations that provide services and advocacy
12 by and for people with all types of disabilities. Founded in 1976, CFILC provides information,
13 training, and peer support that enables ILCs to improve their effectiveness in their local
14 communities. At the state and federal level, CFILC works to coordinate efforts for positive
15 public policy changes that benefit people with disabilities.

16 15. CFILC has been a leader in advocating for the rights of people with disabilities in
17 emergency preparedness. It has organized conferences, produced publications, participated in
18 statewide partnerships, and engaged in legislative advocacy to improve emergency preparedness
19 for people with disabilities. Earlier this month, CFILC launched a coalition called the “Access 2
20 Readiness Coalition” to keep the disability community informed about emergency preparedness
21 issues. CFILC has actively participated in statewide disaster planning so that it can help prepare
22 emergency response and shelter organizations to deal successfully with disability-related needs
23 in a disaster. CFILC also provides guidance to the individual ILCs in their efforts to prepare
24 their constituents for an emergency. CFILC’s programmatic interests, activities, and
25 expenditures on emergency preparedness are directly and adversely affected by Oakland’s failure
26 to appropriately plan to meet the emergency shelter needs of people with disabilities.

27 16. Organizational Plaintiff Californians for Disability Rights (“CDR”) is the oldest
28 and largest membership organization of people with disabilities in California. It currently has
over 600 members. CDR’s objectives are to improve the quality of life for all persons with
CFILC, et al., v. City of Oakland, et al. Case No.: C 07 04608 EDL
FIRST AMENDED COMPLAINT

1 disabilities through education and training and to work to remove access barriers through
2 advocacy and changes in public policy. A major focus of CDR for the past twenty-five years has
3 been improving access to governmental programs and services for people with disabilities and
4 ensuring that local agencies and state entities obey the laws protecting people with disabilities.
5 Many of CDR's members are active on emergency preparedness issues within their
6 communities. Accordingly, the interests that CDR seeks to protect through this litigation are
7 germane to its mission and purpose. Further, CDR's members include people with disabilities
8 who reside in Oakland and have been harmed and continue to experience harm because of
9 Defendants' failure to appropriately plan to meet the emergency shelter needs of people with
10 disabilities.

11 17. Plaintiff MARIAN GRAY is a citizen of the United States and a resident of the
12 City of Oakland. Ms. Gray is a sixty-one year old polio survivor who uses a power wheelchair
13 full-time and a ventilator at night. She is a qualified person with a disability within the meaning
14 of all applicable nondiscrimination law. Ms. Gray is concerned that the City of Oakland is
15 expending public funds for emergency preparedness in a manner that discriminates against
16 people with disabilities. In particular, she is concerned that Oakland is not sufficiently prepared
17 to meet the emergency shelter needs of people with disabilities. Ms. Gray is especially worried
18 that Oakland will be unable to meet her specific emergency needs because it cannot ensure: (1)
19 that there will be a fully accessible shelter that she can go to that will have sufficient electrical
20 power for her to charge her wheelchair and use her ventilator, and (2) that assistance in securing
21 her daily and emergency medications will be provided.

22 18. Defendant CITY OF OAKLAND is placed by California's State Emergency Plan
23 and Standardized Emergency Management System ("SEMS")¹ at the first level of response for
24 meeting the disaster needs of people in its jurisdiction. It is responsible for the protection of life,
25 property, and the environment during a declared emergency. In particular, the City of Oakland is
26
27

28 1 SEMS is a system required by California Government Code § 8607 for managing the response to multi-agency
and multi-jurisdictional emergencies in California. It helps unify all elements of California's emergency
management organization into a single integrated system. Local government agencies must use SEMS to be eligible
for State funding of certain response-related costs resulting from a disaster.

1 responsible for preparing for and providing emergency care and shelter to *all* people made
2 homeless by a natural disaster or other emergency.

3 19. Defendant OFFICE OF EMERGENCY SERVICES (“OES”) is a division of the
4 Oakland Fire Department and is responsible for emergency preparedness, planning, education,
5 and training to ensure a comprehensive, coordinated response by the City to both natural and
6 human-caused disasters. OES shares responsibility for Oakland’s Mass Care and Shelter Plan
7 with the Department of Human Services and the Office of Parks and Recreation.

8 20. Defendant DEPARTMENT OF HUMAN SERVICES (“DHS”) of the City of
9 Oakland is responsible for supporting the City’s mass care and shelter effort in concert with the
10 Office of Parks and Recreation, the American Red Cross, and Oakland Unified School District,
11 through the Oakland Office of Emergency Services and the City’s SEMS protocol. It is
12 specifically charged with assessing the availability of City operated shelters and emergency
13 supplies. DHS shares responsibility for Oakland’s Mass Care and Shelter Plan with the Oakland
14 Office of Emergency Services and the Office of Parks and Recreation.

16 21. Defendant OFFICE OF PARKS AND RECREATION (“OPR”) of the City of
17 Oakland is responsible for coordinating the opening and operations of local shelters during an
18 emergency with the American Red Cross, the Department of Human Services, and Oakland
19 Unified School District. It is also responsible for coordinating the opening of Disaster
20 Application Centers with the Oakland Office of Emergency Services and the State Office of
21 Emergency Services. OPR shares responsibility for Oakland’s Mass Care and Shelter Plan with
22 the Oakland Office of Emergency Services and the Department of Human Services.

23 22. Defendant RENEE A. DOMINGO is the Director of the Oakland Office of
24 Emergency Services. She is sued in her official capacity.

25 23. Defendant ANDREA YOUNGDAHL is the Director of the Department of Human
26 Services of the City of Oakland. She is sued in her official capacity.

27 24. Defendant AUDREE JONES-TAYLOR is the Director of the Office of Parks and
28 Recreation of the City of Oakland. She is sued in her official capacity.

1 25. Defendant DEBORAH EDGERLY is the Oakland City Administrator and, as
2 such, is the City's chief administrative officer. As City Administrator, Ms. Edgerly has the
3 power and duty to execute and enforce all laws, ordinances, and policies of the City Council and
4 to administer the affairs of the City. She is sued in her official capacity.

FACTS

A. The City of Oakland Is Exceptionally Vulnerable to Emergencies

7 26. Due to location, geography and history, Oakland is susceptible to the following
8 emergency conditions:

- a. Earthquakes on at least three known active faults;
 - b. Urban firestorms in the hill areas;
 - c. Multi-alarm fires from old building stock;
 - d. Severe weather conditions resulting in flooding, landslides, tree damage

ages;

 - e. Hazardous material spills or toxic releases caused by transportation and/or incidents;
 - f. Civil disturbance; and
 - g. Terrorist incidents.

7 27. Since 1983, the City of Oakland has experienced eight Presidential-declared
8 disasters, including the 1989 Loma Prieta earthquake, 1991 Oakland Hills Firestorm, the 1997 El
9 Nino winter storms, and the 1998 La Nina winter storms. During many of these disasters, the
10 homes of Oakland residents were destroyed, requiring mass evacuations and the provision of
11 emergency shelter services. For instance, following the Loma Prieta earthquake, more than
12 12,000 Oakland residents were left homeless and more than 18,000 homes were damaged.
13 Following the 1991 Oakland Hills Firestorm, more than 3,000 homes were destroyed.

28. Oakland has been shaken by moderate-to-major earthquakes approximately sixty times in the recorded history of the area. United States Geological Survey (“USGS”) scientists have concluded that there is a 62% probability of one or more major earthquakes (magnitude 6.7 or greater) striking the Bay Area between the years 2003 and 2032.

29. The Hayward fault has the highest probability of producing a major quake. In fact, the Hayward fault is considered “one of the most hazardous in the world” because of its

1 high “slip rate;” its demonstrated ability to generate large, surface-rupturing earthquakes; and its
2 location through a heavily urbanized area.

3 30. The Association of Bay Area Governments (“ABAG”), in a 1996 report entitled
4 “Shaken Awake,” predicted that, if there were an earthquake on the Hayward fault line in the
5 next thirty years, the shelter population in Oakland would be a minimum of 17,500 people and
6 could be as large as 42,000 people.

7 31. As one of the oldest cities in the state, Oakland’s densely populated jurisdiction
8 (7,126 persons per square mile in comparison to 217 persons per square mile in California)
9 includes old building stock (much of which is un-reinforced masonry) and an aging
10 infrastructure. Un-reinforced masonry (“URM”) buildings are the structures most likely to
11 collapse from strong ground shaking or to require demolition afterward. There are
12 approximately 870 buildings on Oakland’s list of potentially hazardous URM buildings.

13 32. It is estimated that, following an earthquake, up to 92% of the URM buildings in
14 Alameda County will be uninhabitable. Many of these older buildings provide low income
15 housing. Because of the rapid rise in housing costs in recent years, there are fewer alternatives to
16 these buildings when they become uninhabitable due to a disaster. The result is that emergency
17 shelters will need to be kept open for a longer period of time. This is precisely what happened
18 following the Loma Prieta earthquake, which destroyed 1300 units of Oakland’s low income
19 housing stock.

20 33. Oakland is also at a higher risk for structural fires than most other jurisdictions in
21 California because of its relatively old and dense development pattern. In the past, strong
22 earthquakes in the Bay Area have been followed by fires. The threat of extensive fire damage is
23 greatest following a major earthquake, at which time the severity of fires may be compounded by
24 the accompanying failure of water mains.

25 34. The Oakland hills are a “fire-dependent ecosystem,” meaning that wildfires occur
26 there every year, especially in late summer and early fall when the area’s natural vegetation is
27 dry and extremely flammable. Large fires in the Oakland Hills are anticipated by city officials
28 every ten to twenty years.

1 35. Given that 42.6% of the land in Alameda County is located in “Wildland Urban
2 Interface Wildfire Threat” areas, an uncontrollable wildfire could threaten a staggering amount
3 of housing. During the first three hours of the 1991 Oakland Hills Firestorm, the fire consumed
4 one house every eleven seconds. It ultimately resulted in 25 deaths, 150 injuries, and the
5 destruction of more than 3,000 homes, making it the costliest wildfire in United States history.
6 Due to repair and rebuilding, the number of people and homes currently in harm’s way is
7 roughly the same as it was before the 1991 Firestorm.

8 36. Oakland also faces other potential hazardous conditions that have forced
9 evacuations and may necessitate emergency shelter services. Excess rain has and will likely
10 continue to result in flooding, landslides, tree damage, and power outages. Over twenty
11 significant landslides have occurred in Oakland during the last seven decades. Most hillside
12 development in Oakland predates the imposition of grading and slope requirements, making
13 homes more susceptible to landslide damage.

14 37. As a port city with a great deal of industry, Oakland is also prone to industrial
15 accidents, such as hazardous material spills, which would require mass evacuations. Finally, as a
16 large city in the Bay Area with a dense population, Oakland is a potential terrorist target. In July
17 2007, the United States Department of Homeland Security designated the Bay Area as one of the
18 six urban areas in the country most at risk for terrorist attacks.

19 **B. Emergencies Disproportionately Affect Persons with Disabilities**

20 38. When a disaster occurs, people with disabilities and the elderly are more likely to
21 suffer its direct impact. Many people with disabilities are unable to evacuate themselves, see
22 approaching danger, or hear announcements to evacuate, making them especially vulnerable to
23 natural disasters. Evacuation announcements are often made using loudspeakers on patrol cars
24 and television broadcasts often fail to include captions, leaving the deaf and hard of hearing
25 without critical emergency information. The lack of accessible transportation makes it extremely
26 difficult for people with disabilities to evacuate and/or travel to emergency shelter.

27 39. People with disabilities are disproportionately dependent on electricity because
28 they need to power much of their assistive technology, such as wheelchairs, scooters, and
communications software. In addition, people with certain disabilities are temperature-sensitive
CFILC, et al., v. City of Oakland, et al. Case No.: C 07 04608 EDL
FIRST AMENDED COMPLAINT

1 and cannot be exposed to extreme temperatures, which may result from power outages. Thus,
2 utility outages alone may require people with disabilities to seek emergency shelter, if available.

3 40. Past disasters have shown that low-income families are nearly ten times more
4 likely to seek public shelter in a disaster versus more moderate to upper income families. People
5 with more resources generally can find alternatives to public shelters, whereas people who have
6 a low income cannot. In addition, low-income people are more likely to live in multi-family
7 homes, which are more vulnerable to collapse because they are not typically reinforced. Because
8 people with disabilities are disproportionately low-income, they tend to be disproportionately
9 represented among shelter residents.

10 41. In addition to the people with disabilities who routinely reside in Oakland, there
11 will be untold additional numbers of people with injuries and temporary disabilities who will
12 need access to temporary shelter and support services in an emergency.

13 **C. Experiences of People With Disabilities in Past Disasters**

14 42. After the Loma Prieta earthquake in 1989, many of the first aid stations in shelters
15 lacked the capacity to keep certain life-sustaining medications. Food, water, supplies, and
16 disaster relief applications were disseminated in areas of shelters that were inaccessible to
17 wheelchair users.

18 43. After the 1994 earthquake in Northridge, California, trash and glass were
19 scattered everywhere, making it extremely difficult for wheelchair users and the visually
20 impaired to navigate the streets. Elevators were not functioning and there was very little
21 accessible transportation available, making it nearly impossible for most people with disabilities
22 to get to shelters.

23 44. Many people with disabilities who were able to get to emergency shelters after the
24 Northridge earthquake were turned away when they arrived. Some people were inappropriately
25 referred to medical facilities when shelter personnel misidentified their disabilities as acute
26 medical conditions. A deaf person was denied services by a shelter because no one understood
27 sign language and individuals with cerebral palsy and multiple sclerosis were denied admission
28 to shelters because they were perceived as being under the influence of drugs or alcohol. Other
people with disabilities learned when they arrived at shelters that guide dogs and service dogs

1 were not allowed, they could not get to the bathrooms because they were located upstairs, or
2 shower stalls were inaccessible.

3 45. The winter storm flooding in Oakland in 1997 required the evacuation of over
4 150,000 Californians, 1,000 of whom resided in nursing facilities or home health care settings.
5 As shelter populations grew, available medical resources became overwhelmed, placing
6 medically fragile individuals at risk.

7 46. During the 2003 wildfires in Southern California, many individuals who require
8 mobility aids to walk were evacuated and brought to emergency shelters without those items. As
9 a result, they were restricted to their beds. Volunteers had to carry them to the restrooms, when
10 needed. Evacuation planning did not include vehicles that could also transport wheelchairs and
11 walkers so evacuees with disabilities could maneuver throughout the shelters without assistance.

12 47. Many of the shelters used in the 2003 wildfires were inaccessible to people with
13 mobility disabilities. Those who use service animals were not initially allowed to bring their
14 animals into the shelters. The deaf were unable to receive critical information in many of the
15 shelters because there were no interpreters available, they couldn't understand the public address
16 systems, and televisions were not captioned. People who rely on specialized medication and did
17 not have prescriptions or a supply with them were placed in danger due to medical conditions.
18 Emergency telephone access was provided through prior arrangements with a vendor that used a
19 trailer that had no telephones located within reach of people using wheelchairs and no
20 telecommunication devices for the deaf.

21 48. After Hurricane Katrina, community-based organizations that serve people with
22 disabilities complained they were unable to obtain information about where emergency shelters
23 were opening, how to transport consumers there, or what types of disabilities the shelters could
24 accommodate. As a result, many people with disabilities were transported to nursing homes
25 where they could not maintain their independence.

26 49. Many of the shelters used during Hurricane Katrina were not physically
27 accessible to people with disabilities. Some shelters refused services to people with service
28 animals and obvious disabilities. Almost all shelters were unable to make their programs
accessible to people with disabilities or to meet basic living needs of people with disabilities.

1 For example, essential medical services were offered on upper floors of shelters with no elevator
2 access. People who had lost their wheelchairs during evacuation had no way to stand in line for
3 shelter services. In addition, shelters were not equipped with durable medical equipment,
4 medications for people with mental illness, or insulin for diabetics. Most shelters had no sign-
5 language interpreters and no written announcements, which meant that deaf evacuees were
6 denied access to the information conveyed over loudspeakers.

7 **D. The Elements of Comprehensive Mass Care and Shelter Planning for People
8 with Disabilities**

9 50. The disability community has been reporting problems with emergency services
10 for decades. In order to prevent the above-described experiences of people with disabilities
11 during disasters, emergency planning must take into account the unique needs of people with
12 disabilities, particularly with respect to mass care and shelter.

13 51. A mass care and shelter plan must describe the roles and responsibilities of city
14 agencies in the provision of mass care, establish potential shelter locations, and list the tasks
15 necessary to support shelter sites and ensure that services and information will be accessible to
16 people with disabilities.

17 52. In September 2003, Alameda County Operational Area funded the development
18 of a planning guide for local governments, entitled "A Guide for Local Jurisdictions in Care and
19 Shelter Planning." The guide details all of the components that are needed for a city to
20 appropriately plan to provide mass care and shelter during a disaster. The following are among
21 those components:

- 22 a. Identify and survey shelter facilities;
23 b. Designate primary and secondary shelter facilities based on size and
24 accessibility;
25 c. Develop a plan to provide people with disabilities with information about
26 accessible sheltering options;
27 d. Develop statements of understanding with all potential shelter facilities;

- 1 e. Develop a statement of understanding with the American Red Cross;
- 2 f. Provide training to city employees who will staff and manage disaster
- 3 shelters;
- 4 g. Develop plans to make accommodations where facilities have barriers that
- 5 impede full access for people with disabilities;
- 6 h. Conduct a pre-occupancy inventory of potential shelter sites to determine
- 7 what operational supplies may already be in place and develop a plan to obtain needed shelter
- 8 supplies and equipment;
- 9 i. Establish vendor agreements with local pharmacies to provide emergency
- 10 replacement prescriptions and medical equipment for the elderly and people with disabilities
- 11 (e.g., orthopedic braces, wheelchairs, breathing aids, and colostomy bags);
- 12 j. Plan for the storage of medications;
- 13 k. Pre-identify shelter sites with back-up generators;
- 14 l. Develop a resource list of community mental health providers and
- 15 services to call upon, if needed;
- 16 m. Identify local para-transit resources for the transport of wheelchair users;
- 17 n. Develop a plan to address the information needs of persons who are deaf,
- 18 blind, or non-English speaking;
- 19 o. Identify and develop relationships with community-based organizations
- 20 that support vulnerable populations so that they can assist with care and shelter operations; and
- 21 p. Provide disaster planning information to licensed care facilities to support
- 22 their emergency preparedness efforts.

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1 53. The City of Oakland's SEMS Emergency Plan,² dated August 2002, requires that
2 all potential shelter sites be surveyed and meet all Americans with Disabilities Act ("ADA")
3 access requirements, which include, but are not limited to:

- 4 a. accessible entrances/exits and paths of travel to and within the shelter;
5 b. accessible parking close to the shelter;
6 c. accessible restrooms and showers (if offered); and
7 d. accessible signage (e.g., Braille) for persons with vision disabilities.

8 When potential shelter facilities are assessed, the City must determine the level of ADA
9 compliance and the need for any modifications. City employees must be trained in what
10 constitutes accessible facilities so that they can appropriately evaluate potential shelter sites.

11 54. Physical access problems are often created by policies and procedures in
12 place at the shelter. Accordingly, policies and procedures for emergency shelter services must
13 take into account the needs of persons with disabilities. There must be policies and procedures
14 for, but not limited to, the following:

- 15 a. Providing para-transit or other accessible form of transportation from
16 inaccessible shelters to accessible shelters;
17 b. Placing key services, such as the infirmary, in accessible areas;
18 c. Ensuring sufficiently wide paths of travel through sleeping areas;
19 d. Permitting service animals within emergency shelters; and
20 e. Providing information in accessible formats for people with sensory and
21 cognitive disabilities.

22 55. City employees who manage and staff shelters must also be trained to be sensitive
23 and responsive to the needs of people with disabilities, from intake to the provision of
24 medications and supplies to the dissemination of information.

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² Oakland's SEMS plan is distinct from its outdated Mass Care and Shelter Plan.

1 **E. Oakland Has Not Adequately Planned to Meet the Mass Care and Shelter
2 Needs of People with Disabilities**

3 56. Oakland is not prepared to meet the unique needs of people with disabilities
4 during an emergency; potential shelter facilities are physically inaccessible and policies,
5 procedures, and plans for people with disabilities are inadequate or non-existent.

6 57. While Oakland has identified a number of potential shelter facilities (i.e.,
7 churches, schools, and park recreation centers), the City's shelter list does not have current
8 contact information for those facilities. More importantly, the City lacks comprehensive
9 information about the accessibility of potential sites. Without this information, Oakland is
10 unable to provide people with disabilities with information about accessible sheltering options.
11 Nor can it ensure that it will be able to provide equal access to its shelter services to people with
12 disabilities.

13 58. The result of Oakland's failure to maintain current and comprehensive
14 information about potential shelter sites is that Oakland has designated shelter facilities that are
15 not physically accessible. For example, some of the facilities on the list have multiple levels
16 with no elevators, no Braille signage, doorways that are too narrow, or restrooms and/or showers
17 that are completely inaccessible to wheelchair users.

18 59. Oakland has also failed to revise its Mass Care and Shelter Plan from the 1980s
19 to address the needs of people with disabilities. As a result, the City lacks many, if not all, of the
20 planning elements described above. For example, Oakland has:

- 21 a. No plan for modifying shelters that do not meet ADA requirements so that
22 people with disabilities will have full access to all services being provided at the shelter facility;
- 23 b. No memoranda of understanding between the City and potential shelter
24 sites;
- 25 c. No inventory of shelter supplies;
- 26 d. No arrangements to provide replacement prescriptions or medical
27 equipment;

- 1 e. No arrangements for the transportation of people with disabilities from
2 inaccessible shelters to accessible shelters;
- 3 f. No plan to meet the information needs of people who are deaf, blind, or
4 non-English speaking;
- 5 g. No arrangements with community-based organizations that service special
6 needs populations;
- 7 h. No plan to meet the needs of people who choose to home-shelter on their
8 property;
- 9 i. No plans to assist the County in serving people with disabilities who are
10 placed in the medically fragile shelter; and
- 11 j. No list of residential care facilities that have viable plans for continued
12 care and evacuation of clients in an emergency.

13 60. The City is aware that it needs to revise and update its Mass Care and Shelter
14 Plan. In a comprehensive review of the City's emergency response capabilities in November
15 2005, directed by the Oakland City Council, the City found that it needs to improve its
16 emergency planning to more fully address special needs populations. The Office of Emergency
17 Services indicated that it plans to address the needs of people with disabilities in its next revision
18 of the City's Mass Care and Shelter Plan.

19 61. In November 2006, an engineering design firm submitted a proposal for the
20 preparation of a care and shelter plan for the City of Oakland that would address, among other
21 things, the needs of people with disabilities. Almost one year later, Oakland has yet to contract
22 with that firm or any other company for assistance with the development of its care and shelter
23 plan. Nor has it developed or begun implementing such a plan on its own. Without a current
24 mass care and shelter plan, Oakland cannot provide any assurance that, if a natural disaster
25 happened tomorrow, it is prepared to meet the unique shelter needs of people with disabilities.
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1 62. Oakland cannot depend on the American Red Cross to relieve it of its planning
2 responsibilities. The City must be prepared to provide mass care and shelter services prior to the
3 arrival of support from the American Red Cross, which may take as long as five days. If and
4 when the American Red Cross takes over management of emergency shelters in Oakland, the
5 City is still responsible for meeting the needs of people with disabilities.

FIRST CAUSE OF ACTION (Violation of Americans with Disabilities Act)

63. Plaintiffs incorporate, by reference herein, the allegations in paragraphs 1 through
62, inclusive.

64. Title II of the Americans with Disabilities Act (“ADA”) prohibits a public entity from excluding a person with a disability from participating in, or denying the benefits of, the goods, services, programs and activities of the entity or otherwise discriminating against a person on the basis of disability. 42 U.S.C. § 12132.

65. The implementing regulations of Title II of the ADA require that, in providing any aid, benefit or service, a public entity may not deny a qualified individual with a disability the opportunity to benefit from any such aid, benefit or service. 28 C.F.R. § 35.130(b)(1)(i).

66. The Title II implementing regulations also state that “a public entity may not, in determining the site or location of a facility, make selections (i) that have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program or activity with respect to individuals with disabilities.” 28 C.F.R. § 35.130(b)(4)(i)-(ii).

67. The Title II implementing regulations further provide that an individual with a disability shall not be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity because a public entity' facilities are inaccessible to or unusable by individuals with disabilities. 28 C.F.R. §35.149.

68. Plaintiff MARIAN GRAY is a qualified individual with a disability within the meaning of the ADA.

1 69. By failing to plan to meet the mass care and shelter needs of people with
2 disabilities, Defendants have excluded them from participation in, denied them the benefits of,
3 and discriminated against them in its mass care and shelter program and services.

4 69. Defendants have failed to develop policies, practices and/or procedures that
5 address the mass care and shelter needs of individuals with disabilities, and, as such, Defendants
6 deny individuals with disabilities the opportunity to benefit from its mass care and shelter
7 program and services.

8 70. Defendants have selected facilities to be used as emergency shelters that are
9 physically inaccessible or unusable by people with disabilities and therefore have the effect of
10 excluding individuals with disabilities from and denying them the benefits of the City's mass
11 care and shelter program and services.

12 71. Defendants' conduct constitutes ongoing and continuous violations of the ADA,
13 and unless restrained from doing so, Defendants will continue to violate the ADA. This conduct,
14 unless enjoined, will continue to inflict injuries for which Plaintiffs have no adequate remedy at
15 law. Consequently, Plaintiffs are entitled to injunctive relief pursuant to section 308 of the ADA
16 (42 U.S.C. § 12188), as well as reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

SECOND CAUSE OF ACTION
(Violation of Section 504 of the Rehabilitation Act of 1973)

72. Plaintiffs incorporate, by reference herein, the allegations in paragraphs 1 through 71, inclusive.

73. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the implementing regulations, prohibit discrimination against people with disabilities by recipients of federal funding. Section 504 provides, in pertinent part, that:

No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance

74. Plaintiff MARIAN GRAY is a qualified individual with a disability within the meaning of Section 504.

75. Defendants receive federal financial assistance to provide mass care and shelter services during an emergency.

3 76. By failing to plan to meet the mass care and shelter needs of people with
4 disabilities, Defendants have excluded them from participation in, denied them the benefits of,
5 and discriminated against them in programs and activities that receive federal financial
6 assistance, solely by reason of their disabilities, in violation of 29 U.S.C. § 794 and the
7 implementing regulations.

8 77. As a proximate result of Defendants' violations of Section 504 of the
9 Rehabilitation Act, Plaintiffs have been injured as set forth herein.

10 78. Plaintiffs have no adequate remedy at law and unless the relief requested herein is
11 granted, Plaintiffs will suffer irreparable harm in that they will continue to be discriminated
12 against and denied access to Defendants' mass care and shelter program. Consequently,
13 Plaintiffs are entitled to injunctive relief, as well as reasonable attorneys' fees and costs.

14 ||| WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CAUSE OF ACTION

(Violation of California Civil Code § 54, *et seq.*)

79. Plaintiffs incorporate, by reference herein, the allegations in paragraphs 1 through
78, inclusive.

80. The emergency shelter facilities under the control of Defendants constitute places of public accommodation and/or places to which the general public is invited within the meaning of California Civil Code §§ 54.1 and 54.3.

81. Defendants have and are violating Plaintiffs' rights under California Civil Code § 54, *et seq.*, by denying Plaintiffs full and equal access to and use and enjoyment of emergency shelter facilities and services due to the acts and omissions alleged herein.

82. Defendants' discriminatory conduct alleged herein includes, *inter alia*, the violation of the rights of persons with disabilities set forth in Title II of the ADA and accompanying regulations, all of which have been expressly incorporated into California Civil Code § 54, *et seq.*, since January 1, 1993.

1 83. Defendants' actions constitute a violation of Plaintiffs' rights under California
2 Civil Code § 54, *et seq.*, and therefore Plaintiffs are entitled to injunctive relief remedying the
3 discrimination.

4 84. Plaintiffs are also entitled to reasonable attorneys' fees and costs.

5 WHEREFORE, Plaintiffs pray for relief as set forth below.

FOURTH CAUSE OF ACTION
(Violation of California Government Code § 11135, *et seq.*)

85. Plaintiffs incorporate, by reference herein, the allegations in paragraphs 1 through 84, inclusive.

86. California Government Code § 11135 and the regulations promulgated thereunder prohibit discrimination against people with disabilities by any program or activity funded by the State. Section 11135 provides, in pertinent part, that:

No person in the State of California shall, on the basis of . . . disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the State.

87. Defendants receive financial assistance from the State of California to provide mass care and shelter services during an emergency.

88. Through their actions and inactions, by refusing to provide Plaintiffs full and equal access to their emergency mass care and shelter services, Defendants have denied Plaintiffs the benefits of, or unlawfully subjected them to discrimination, in such programs and activities solely because of their disabilities in violation of Government Code § 11135 and the regulations promulgated thereunder.

89. As a proximate result of Defendants' violations of § 11135, Plaintiffs have been injured as set forth herein.

90. Plaintiffs have no adequate remedy at law. Unless the relief requested herein is granted, Plaintiffs will suffer irreparable harm in that they will continue to be discriminated against and denied full access to Defendants' facilities, programs, services, and activities on the basis of disability. Consequently, Plaintiffs are entitled to injunctive relief and reasonable attorneys' fees and costs.

1 WHEREFORE, Plaintiffs pray for relief as set forth below.

2
3 **FIFTH CAUSE OF ACTION**
4 **(Declaratory Relief)**

5 91. Plaintiffs incorporate, by reference herein, the allegations in paragraphs 1 through
6 90, inclusive.

7 92. Defendants deny failing to comply with applicable laws prohibiting
8 discrimination against persons with disabilities in violation of the Americans with Disabilities,
9 Act, Section 504 of the Rehabilitation Act, California Civil Code § 54, *et seq.*, and California
10 Government Code § 11135, *et seq.*

11 93. A judicial declaration is necessary and appropriate at this time in order that each
12 of the parties may know their respective rights and duties and act accordingly.

13 WHEREFORE, Plaintiffs pray for relief as set forth below.

14 **REQUEST FOR RELIEF**

15 WHEREFORE, Plaintiffs pray for relief as follows:

16 1. A declaration that Defendants' failure to adequately plan to meet the
17 emergency mass care and shelter needs of people with disabilities violates the Americans with
18 Disabilities Act, Section 504 of the Rehabilitation Act, California Civil Code § 54, *et seq.*, and
19 California Government Code § 11135, *et seq.*

20 2. An order and judgment enjoining Defendants from violating the Americans with
21 Disabilities Act, Section 504 of the Rehabilitation Act, California Civil Code § 54, *et seq.*, and
22 California Government Code § 11135, *et seq.*, and requiring Defendants to comprehensively
23 survey the accessibility of all potential shelter sites and develop and implement a mass care and
24 shelter plan that addresses the emergency needs of people with disabilities.

25 3. Plaintiffs' reasonable attorneys' fees and costs.

26 4. Such other and further relief as the Court deems just and proper.

1 RESPECTFULLY SUBMITTED,

2 DATED: October 1, 2007

3 DISABILITY RIGHTS ADVOCATES

6 By: /s/
7 JENNIFER WEISER BEZOZA
8 Attorneys for Plaintiffs

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